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DISPUTES BLOCK FRANK SPEECH

PDF PAGE 1, COLUMN 7

DORSEY PLANNING TO MEET NEW ATTACK ON CONLY'S TESTIMONY

Only an agreement on a few disputed points remained to be accomplished on the resumption of the hearing on a new trial for Leo M. Frank Friday. The entire 115 reasons had been reviewed at the close of Thursday afternoon's session, but several of them were left unapproved to await an investigation of the records of the case by Solicitor Dorsey. The arguments were to start immediately on the approval of all the reasons.

Two of the reasons, the alleged bias of A. H. Henslee and Marcellus Johenning, jurors, were held in abeyance until Judge Roan had looked over the affidavits of the defense and the counter affidavits submitted by the Solicitor. The judge intimated that an approval of these as reasons on which to argue for a new trial would be tantamount to the granting of the motion, in that an acceptance of the charges of bias as facts automatically would furnish warrant for a new trial without argument by the attorneys.

Frank's lawyers sprang a surprise in the last of their long string of reasons, holding that by the State's theory Jim Conley was an accomplice and that his testimony therefore could not be accepted except as corroborated by the circumstances or by another witness. The Solicitor remarked that he had not considered this proposition but would be prepared to talk on it later in the hearing.

The reason charged that the court erred in not instructing the jury that if they believed from the evidence that Conley watched for Frank ate pencil factory door, and that his purpose in watching was to protect Frank in the commission of acts which constitute a felony in the State of Georgia, then Conley, as to any alleged murder committed in the progress of any such attempt to commit the acts that were described by the negro, would be an accomplice, and the jury could not give him credence unless he was corroborated by the facts and circumstances or by another witness.

The announcement that the temper of the crows about the courthouse on the closing days of the trial was such that grave fears were entertained for the safety of Frank was one of the

interesting disclosures of the hearing. Attorney Luther Rosser, chief of counsel for Frank, asserted that they would have “Eaten the defendant alive” if he had gone out among them on the day the verdict was rendered, particularly if an acquittal had been brought in.

Take Advantage of Absence.

Solicitor contended that the defense had waived the presence of Frank in the courtroom at the time the verdict was rendered and now were taking advantage of it to claim that their client would have been mobbed or lynched had he been there, when, as a matter of fact, there was no way of proving that Frank might have received not even a hostile demonstration.

A warm dispute arose of this contention, during which it developed that the court was adjourned in the midst of Dorsey’s concluding argument Saturday noon to permit the intense feeling to subside, and that later Frank’s presence at the rendering of the verdict was waived by his attorneys at the suggestion of Judge Roan himself. Judge Roan had been addressed by the editors of the three Atlanta newspapers, militia officials and the chief of the police department, and urged, it was claimed, to take every precaution for the safe-guarding of the prisoner, against whom there was unmistakably hostile sentiment.

The hostile sentiment against Frank was emphasized in many of the reasons advanced for a new trial. To most of them Judge Roan certified as they were submitted. The trial was taken from its outset, and note made of every outbreak inside and outside the courtroom. The ovations received by Solicitor Dorsey were described minutely, and the occasions of applause and cheering inside the courtroom when Dorsey scored a point were stressed repeatedly.

Crowd Gets Signal.

Attention also was called to the jeers and derisive laughter that met many of the arguments of Frank’s lawyers. From first to last, Frank’s counsel contended, it was most evident that the

defendant was not obtaining the fair and impartial trial guaranteed by law. The jury was coerced into giving a verdict of guilty and would have dared give no other verdict, according to the defense.

The climax, according to the reasons accompanying the motion for a new trial, came when the verdict was

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CROWD'S TEMPER AT END OF FRANK TRIAL IS URGED AS A REHEARING REASON

Continued From Page 1.

rendered. Apprehensive of the misconduct of the crowd, Judge Roan had cleared the courtroom before the jurors entered to submit their verdict.

While the verdict was being rendered the crowd was signaled that Frank had been declared guilty, and an instantaneous shout went up from the large concourse of persons

outside the courtroom, causing a disturbance so great, Judge Roan certified, that he had some difficulty in hearing the polling of the jury.

A crowd of shouting, cheering men met Dorsey as he emerged victorious from the courtroom, and as he made his way across the street toward his offices, members of the throng caught him up and carried him on their shoulders. This, Frank's lawyers commented, was an impressive illustration of the temper of the crowds about the courthouse.

Judge Roan's charge to the jury was carefully reviewed and several points in it picked out to employ as grounds for a new trial. The court was represented to be in error for failing to charge the jury as to the weight that should be given the testimony of Conley, who confessed on the stand that he several times previously had sworn falsely. The judge was accused of leaving the credibility of witnesses of this sort entirely to the jurors.

Wrong Conclusions Drawn.

The court also was said to be in error because he had permitted Solicitor Dorsey and Attorney Frank Hooper in their arguments to draw unwarranted conclusions, after these conclusions had been objected to by Rosser and Arnold. One of the instances cited was Hooper's charge that the failure of the defense to cross-examine the girl witnesses put on the stand by the State was a tacit admission that Frank was guilty of immoral acts and practices to which the witnesses had alluded broadly.

A similar argument was made by Solicitor Dorsey, who maintained that because the defendant's wife failed to visit him for some time after he was taken to the Tower she had the consciousness of his guilt in her heart.

Arnold, in speaking in defense of another reason, resented the innuendo contained in the Solicitor's declaration that "I wouldn't be surprised if the family physicians of some of you jurors had been called to testify on the stand," the implication being that Frank's lawyers shrewdly had engaged the jurors'

family physicians in order that their testimony might have more influence, although they were not experts on the particular line of evidence before the court.

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DORSEY CHARGES FRANK CONSPIRACY

PDF PAGE 2, COLUMN 7

SOLICITOR DECLARES FACTORY EMPLOYEES

TRIED TO BLOCK PROBE

Solicitor General Dorsey repeated at the hearing on a new trial for Leo M. Frank Friday his charges that friends of Frank and employees at the pencil factory had so concealed and withheld evidence during the murder mystery as to be conclusive indication that the defendant was the guilty person.

The defense was seeking to maintain its contention that the court was in error for allowing testimony and argument along this line when the Solicitor reiterated his belief. He said that the apparent unanimity with which friends and employees withheld information from the detectives made it convincing to join his mind that there was a virtual conspiracy to protect the defendant.

“I hold that I had a right to state what I thought,” he declared to Judge Roan.

“Maybe the Solicitor had no rights in the matter, but I think he had. Let them put in their reasons exactly what I said. I’m willing to stand by it.”

The hearing was delayed considerably by continuous squabbles over minor points in the wording and phrasing of the defense’s reasons.

Attorney Arnold and Solicitor Dorsey, as soon as the hearing on a new Frank trial resumed Friday morning, were embroiled in an argument over the completeness with which the court stenographers had entered the objections of the defense during the trial.

Arnold maintained that the stenographers in many instances had entered in the record only the first objection made by a lawyer for the defense and had disregarded the additional

objections that might have been made during the subsequent argument, several of the court reporters merely designating the debate by the notation, “Attorneys argued question pro and con.”

Lee’s Testimony Again.

The point arose at the beginning of the review of reasons which were left unapproved from the first consideration. The defense maintained that the court erred in letting in the testimony of Newt Lee that Detective John Black had talked to him longer than Frank, the inference be Frank was not seeking to get the truth from the negro. Arnold contended that objection had been made at the time on the ground that it was immaterial, irrelevant, illegal, prejudicial and a mere conclusion.

Dorsey retorted that the only objection made then was that it was not in rebuttal. At this juncture, Attorney Arnold made the charge that the stenographers at times got only one part of the objection, missing what might be made in the course of the following argument. Stenographers Teitlebaum and Freer were called and sworn. Teitlebaum testified that he reported the arguments of counsel in full and later “boiled them down,” retaining all the objections.

Freer said that he omitted the arguments, but made record of all objections, unless one chanced to slip by him, as rapidly as they were made. The disputed reasons were approved after slight revision.

Object to Word “Employ.”

For nearly an hour the attorneys wrangled over the using of the word “employed” in one of the reasons. The defense held that the court had erred in permitting over the objections of the defendant the testimony of Detective Black that Frank had employed counsel the Monday morning after the crime.

Dorsey objected to the wording, saying that there was nothing in the record to warrant the use of “employed.” After this one word had deadlocked proceedings as effectually as a

difference over an extremely vital point, a compromise was reached by revising the paraphrase of Black's evidence to read that Frank "had" counsel the Monday morning after the murder.

J. W. Coleman, stepfather of the murdered Mary Phagan, was an interested spectator at part of the morning session. He was on hand when the hearing opened, and remained listening intently to the debate of opposing council until the middle of the forenoon.

Starnes and Black Present.

Detectives Starnes and Black, who were assigned to Solicitor Dorsey to work under his direction on the investigation into the Phagan murder mystery, have been in constant attendance since the hearing began Wednesday.

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the defendant alive” if he had gone out among them on the day the verdict was rendered, particularly if an acquittal had been brought in.

Take Advantage of Absence.

Solicitor Dorsey contended that the defense had waived the presence of Frank in the courtroom at the time the verdict was rendered and

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DORSEY PLANS TO FIGHT NEW ATTACK ON CONLEY TESTIMONY AS ILLEGAL

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now were taking advantage of it to claim that their client would have been mobbed or lynched had he been there, when, as a matter of fact, there was no way of proving that Frank might have received not even a hostile demonstration.

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DORSEY BUILDS UP DEFENSE FOR JURORS

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SOLICITOR ARMED WITH SHEAF OF AFFIDAVITS

TO DEFEAT REHEARING

With the grounds to be argued for a new trial, settled upon at the close of the forenoon session of the Frank hearing in the State Capitol, the lawyers for the prosecution and defense made ready in the afternoon to begin the actual arguments for and against the motion of the defense.

Practically everything was cleared away except the reading of a few more of the affidavits against A. H. Henslee and Marcellus Johenning, the two jurors accused of bias and prejudice in their consideration of the evidence. It was regarded as likely that the hearing would conclude late Saturday afternoon.

Solicitor Dorsey, in spite of the defense's charges and evidence against Henslee and Johenning, conceded nothing. He was prepared with a great sheaf of affidavits with which to support his arguments that neither of the attacked jurors was guilty of bias or prejudice when he went into the jury box. As this offered the possibility of being the point on which a new trial might hinge, the Solicitor was prepared to fight to the very last every contention of bias by the defense.

Attorney Rosser began the reading of the bias affidavits at 12 o'clock, immediately after the last of the 115 reasons advanced by the defense had been accepted by the prosecution or revised by Judge Roan. Most of them had been published in the newspapers.

New affidavits testified to the presence in Albany, Ga., of Henslee on the date he denied he was there. Stiles Hopkins, member of the Rosser & Brandon law firm, appeared at the hearing with the register of the New Albany Hotel bearing the signature of Henslee at the disputed time. This, the defense

contended, clinched their allegation that Henslee was there at the time he is reported to have made denunciatory remarks about Frank.

Among the remarks that Henslee was alleged to have made before the trial were that he “would like to break Frank’s neck;” that he would like to bet a dollar that he would be on the Frank jury; that he believed Frank and no one else was guilty of the murder, and that if he was selected as a juryman he would do his best to obtain a conviction.

Denounced Frank’s Race.

There were many denunciatory references to Frank’s race, and one affidavit charged Henslee with saying that if the jury ever turned him loose he would not get out of town alive.

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Warrant for Fisher Received From Dalton.

A warrant for Ira W. Fisher, the “mysterious witness” in the Frank case, charging murder, was received at the Sheriff ‘s office Friday morning from the authorities of Dalton.

In addition to the warrant, request was made that the authorities at Dalton be notified immediately when the Atlanta authorities are through with Fisher.

According to a statement Friday morning of J. C. Shirley, the man accused by Fisher, the criminal libel charge sworn out against Fisher probably will be withdrawn. The hearing was set for Saturday before Justice Puckett, but this probably will be cancelled so that the Dalton authorities may have the custody of Fisher immediately. Chief Lanford declared Friday he also was in favor of turning Fisher over to the Whitfield authorities.

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ARNOLD ATTACKS “MOB SPIRIT”

ATLANTA’S PREJUDICE AS BITTER AS RUSSIA’S DECLARES ATTORNEY

Reuben R. Arnold, in the opening argument of the defense in behalf of a new trial for Leo M. Frank Friday afternoon in the library of the State Capitol, made a dramatic comparison of the Frank trial with the “ritual murder” trial now in progress in Keiff, Russia.

Attorney Arnold declared that as horrible as is that travesty on justice in Keiff, that in Atlanta last August was no less horrible.

He made a bigger commentary upon the prejudice and mob spirit with which he said the defense was confronted at every turn.

“We have had to contend against two hydra-headed proposition,” he said. “Prejudice and ignorance, the twin evils. We have had to contend with the spirit of the mob. This is no idle dream, but a fact of which your honor is well aware. We have been so circumvented by prejudice and by hatred that their menacing influence has been constantly present in the court.”

“The civilized world has been horrified by what is going on in Kieff, Russia, but it is not much stranger than this trial which was enacted in our great city.”

A vigorous assault upon the character and reputation for truthfulness of men who swore against A. H. Henslee and Marcellus Johenning, jurors in the Frank trial, and an equally vigorous defense of the two men who are accused of bias and prejudiced, were made by Solicitor Dorsey Friday afternoon at the hearing on a new trial for Leo M. Frank in the library of the State Capitol.

C. P. Stough, of Atlanta, an agent for the Masonic Annuity, was one of those most bitterly attacked in the affidavits filed with the court by the Solicitor. H. L. Bennett swore that he was well acquainted with the character of Stough, and that he knew it to be bad. He declared he would not believe Stouch on oath.

Lou Castro, a ball player, who was one of the witnesses for the defense during the trial, signed an affidavit testifying that he knew Stough and Sam Aaron, the latter another of the defense’s affiants, and that he would believe neither upon oath.

W. P. Neil, who swore that witnessed one of the spectators in the courtroom grab a juryman by the arm as the jurors were entering, was attacked in affidavits signed by W. E. Mote and R. H. McKenzie, who asserted that Neil’s character was bad and that they would not believe him on oath.

A number of affidavits submitted by the Solicitor testified to the good character of Henslee and Johenning. A long deposition by Henslee was read, in which the Frank juror categorically denied every charge of bias and prejudice made against him, and said that on June 2, when he was reported as being on a train between Atlanta and Experiment Station, was in reality at least 200 miles from there.

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PDF PAGE 5, COLUMNS 1 & 6

PDF PAGE 5, COLUMN 1

DORSEY ASSAILS ACCUSERS OF FRANK JURORS

PDF PAGE 5, COLUMN 6

SHEAF OF AFFIDAVITS FILED BY SOLICITOR ATTACK HENSLEE FOES

A vigorous assault upon the character and reputation for truthfulness of men who swore against A. H. Henslee and Marcellus Johenning, jurors in the Frank trial, and an equally vigorous defense of the two men who are accused of bias and prejudice, were made by Solicitor Dorsey Friday afternoon at the hearing on a new trial for Leo M. Frank in the library of the State Capitol.

C. P. Stough, of Atlanta, an agent for the Masonic Annuity, was one of those most bitterly attacked in the affidavits filed with

the court by the Solicitor. H. L. Bennett swore that he was well acquainted with the character of Stough, and that he knew it to be bad. He declared he would not believe Stouch on oath.

Lou Castro, a ball player, who was one of the witnesses for the defense during the trial, signed an affidavit testifying that he knew Stough and Sam Aaron, the latter another of the defense's affiants, and that he would believe neither upon oath.

W. P. Neil, who swore that witnessed one of the spectators in the courtroom grab a juryman by the arm as the jurors were entering, was attacked in affidavits signed by W. E. Mote and R. H. McKenzie, who asserted that Neil's character was bad and that they would not believe him on oath.

A number of affidavits submitted by the Solicitor testified to the good character of Henslee and Johenning. A long deposition by Henslee was read, in which the Frank juror categorically denied every charge of bias and prejudice made against him, and said that on June 2, when he was reported as being on a train between Atlanta and Experiment Station, was in reality at least 200 miles from there.

The defense strengthened its claim that Henslee was in Albany, Ga., July 8, by showing a carbon copy of an order signed by Henslee in Albany on that date.

Final Arguments Begin.

Arguments began soon after the depositions were submitted.

Attorney Rosser began the reading of the bias affidavits at 12 o'clock, immediately after the last of the 115 reasons advanced by the defense had been accepted by the prosecution or revised by Judge Roan. Most of them had been published in the newspapers.

New affidavits testified to the presence in Albany, Ga., of Henslee on the date he denied he was there. Stiles Hopkins, member of the Rosser & Brandon law firm, appeared at the hearing with the register of the New Albany Hotel bearing the

signature of Henslee at the disputed time. This, the defense contended, clinched their allegation that Henslee was there at the time he is reported to have made denunciatory remarks about Frank.

Among the remarks that Henslee was alleged to have made before the trial were that he “would like to break Frank’s neck;” that he would like to bet a dollar that he would be on the Frank jury; that he believed Frank and no one else was guilty of the murder, and that if he was selected as a juryman he would do his best to obtain a conviction.

Denounced Frank’s Race.

There were many denunciatory references to Frank’s race, and one affidavit charged Henslee with saying that if the jury ever turned him loose he would not get out of town alive.

Solicitor General Dorsey repeated at the hearing on a new trial for Leo M. Frank Friday his charges that friends of Frank and employees at the pencil factory had so concealed and withheld evidence during the murder mystery as to be conclusive indication that the defendant was the guilty person.

The defense was seeking to maintain its contention that the court was in error for allowing testimony and argument along this line when the Solicitor reiterated his belief. He said that the apparent unanimity with which friends and employees withheld information from the detectives made it convincing to join his mind that there was a virtual conspiracy to protect the defendant.

“I hold that I had a right to state what I thought,” he declared to Judge Roan.

“Maybe the Solicitor had no rights in the matter, but I think he had. Let them put in their reasons exactly what I said. I’m willing to stand by it.”

The hearing was delayed considerably by continuous squabbles over minor points in the wording and phrasing of the defense’s reasons.

Attorney Arnold and Solicitor Dorsey, as soon as the hearing on a new Frank trial resumed Friday morning, were embroiled in an argument over the completeness with which the court stenographers had entered the objections of the defense during the trial.

Arnold maintained that the stenographers in many instances had entered in the record only the first objection made by a lawyer for the defense and had disregarded the additional objections that might have been made during the subsequent argument, several of the court reporters merely designating the debate by the notation, “Attorneys argued question pro and con.”

Lee’s Testimony Again.

The point arose at the beginning of the review of reasons which were left unapproved from the first consideration. The defense maintained that the court erred in letting in the testimony of Newt Lee that Detective John Black had talked to him longer than Frank, the inference be Frank was not seeking to get the truth from the negro. Arnold contended that objection had been made at the time on the ground that it was immaterial, irrelevant, illegal, prejudicial and a mere conclusion.

Dorsey retorted that the only objection made then was that it was not in rebuttal. At this juncture, Attorney Arnold made the charge that the stenographers at times got only one part of the objection, missing what might be made in the course of the following argument. Stenographers Teitlebaum and Freer were called and sworn. Teitlebaum testified that he reported the arguments of counsel in full and later “boiled them down,” retaining all the objections.

Freer said that he omitted the arguments, but made record of all ob-

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Continued From Page 1.

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jections, unless one chanced to slip by him, as rapidly as they were made. The disputed reasons were approved after slight revision.

Object to Word “Employ.”

For nearly an hour the attorneys wrangled over the using of the word “employed” in one of the reasons. The defense held that the court had erred in permitting over the objections of the defendant the testimony of Detective Black that Frank had employed counsel the Monday morning after the crime.

Dorsey objected to the wording, saying that there was nothing in the record to warrant the use of “employed.” After this one word had deadlocked proceedings as effectually as a difference over an extremely vital point, a compromise was reached by revising the paraphrase of Black’s evidence to read that Frank “had” counsel the Monday morning after the murder.

J. W. Coleman, stepfather of the murdered Mary Phagan, was an interested spectator at part of the morning session. He was on hand when the hearing opened, and remained listening intently to the debate of opposing council until the middle of the forenoon.

Starnes and Black Present.

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